



# MONTANA DISTRICT COUNCIL OF LABORERS

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April 29, 2004

SDMS Document ID



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Freedom of Information Office Staff  
Records, Privacy and FOIA Branch Office  
Office of Environmental Information  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue (2822T) NW  
Washington, D.C. 20460

Re: APPEAL OF FREEDOM OF INFORMATION REQUEST –  
No. 08RIN 159-04

Dear Sir or Madam:

This will appeal the denial of information requested by me under the Freedom of Information Act and agency regulations. My letter of request, sent on March 3, 2004, sought certified payroll information submitted by Environmental Restoration, Inc., et al, pursuant to the Davis-Bacon Act. My request was denied by Patricia D. Hull, Assistant Regional Administrator, on April 7, 2004. A copy of the denial letter is attached.

In that letter, Ms. Hull invoked the exemptions for confidential business information and privacy interests and concluded that access would be denied to those materials. These exemptions do not properly apply.

The question of privacy can be dealt with easily. As I tried to explain to the Associate Regional Counsel, I am not interested in the names, addresses and social security information contained in the payroll records. That information can be redacted. This should satisfy any privacy concerns, as shown by other agencies' willingness to produce such records on these terms. *See, e.g., Sheet Metal Workers International Association v. U.S. Air Force*, 63 F.3d 994 (10<sup>th</sup> Cir. 1995). Courts that have upheld the withholding of certified payrolls have done so only on the ground that names and addresses are entitled to protection. *See, e.g., SMWIA, Local Union No. 19*, 135 F.3d 891 (3d Cir. 1998); *Hopkins v. U.S. Dept. of Housing and Urban Development*, 929 F.2d 81 (2d Cir. 1991).

Ms. Hull also cites EPA Class Determination 1095, "Confidentiality of Certain Business Information Submitted by Contractors and Prospective Contracts." This class determination does appear to apply on its face to the requested information, but on closer consideration the

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limited certified payroll information I seek cannot constitute "confidential business information."

The wage rates paid to employees on the project are set by the Wage Determinations issued by the Department of Labor. These rates must even be posted on the jobsites. Thus, the wage rates themselves are not "confidential information." The only open question is whether the contractor actually complied with its statutory obligation to pay these rates. I assume that it did. My principal purpose in seeking confirmation that these rates were paid is to establish to the satisfaction of the federal and Montana Departments of Labor that these wage rates continue to prevail for this type of work. If necessary, I will agree not to use the payroll information for any competitive purpose. However, it seems clear that the information is not entitled to any protection under FOIA. Again, I am not aware of any case in which a court has upheld the withholding of certified payrolls which did not include employee names and addresses.

Because the Freedom of Information Act exemptions do not cover the requested material, I request that the agency review the record and order the documents to be disclosed to me. Pursuant to the Act's requirements on administrative appeals, I request a response to this appeal within twenty working days.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Siemers".

Randy Siemers  
P.O. Box 6382  
Helena, Montana 59604

enc.